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Committee on Transportation**

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RQ-732

August 8, 1994

The Honorable Dan Morales
Attorney General of Texas
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Opinion Committee

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Re: Vernon's Ann. Civ. St., Article 9103, (added by Acts 1993, 73rd Leg., ch. 553, § 9, eff. Sept. 1, 1993)

Dear General Morales,

I respectfully request the opinion of your office regarding section 1(2) of Article 9103. The enabling legislation, House Bill 2105, transferred non-agricultural public warehouse regulation from the Texas Department of Agriculture to the Texas Department of Licensing and Regulation. The background given in the Senate Bill Analysis of H.B. 2501 states that this change was made because *"Some believe that the public warehouse industry licensing and regulation system in Texas is complex and needs a more uniform regulatory program that offers greater user protection and marketing tools and conforms with federal law."*

Article 9103, section 1(2) defines a "Public warehouseman" as "a person who stores personal property that is not an agricultural commodity for hire and issues a negotiable warehouse receipt for such property." Unfortunately, this definition requiring the issuance of negotiable receipts places an unnecessary burden on the public warehouse industry and runs counter to federal guidelines set forth by the Uniform Commercial Code.

Specifically, negotiable warehouse receipts are rarely, if ever, used by public warehouses. Security agreements filed under Section 9 of the U.C.C. and other collateral arrangements have made negotiable warehouse receipt financing unnecessary. Negotiable receipts are difficult to administer, are riskier to manage, and have become all but obsolete in the last 30 years. Additionally, the multitude of goods passing through warehouses are often divided and combined with other shipments, and since negotiable receipts must physically be surrendered for endorsement of partial releases they create a bureaucratic nightmare for the industry and its customers. Like most modern industries, public warehouses have been moving towards paperless transactions. Records of deposits, releases, and transfers are all done by computer and no negotiable receipts are issued. To require the tender of non-negotiable warehouse receipts as a pre-condition for release of the goods would completely stop all normal merchandise warehouse operations.

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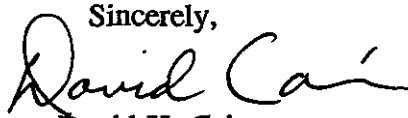
Also, Section 7 of the U.C.C. contains detailed requirements concerning the issuance, surrender, negotiation, endorsement, and all other aspects governing negotiable receipts. In the highly unlikely instance that a negotiable receipt is issued there are adequate safeguards in effect to protect the warehouseman and the depositor.

The original intent of this section was to protect the producers, owners, and customers of public warehouses and to offer a more uniform and less complex regulatory system. Unfortunately, by requiring negotiable receipts, the statute has complicated business transactions by adding requirements in areas that are already protected under federal law. To impose these regulations upon the merchandise warehouse industry regarding negotiable receipts is without purpose. Neither they nor their customers issue, need, want or use such receipts. This requirement would place Texas merchandise warehousemen at a significant disadvantage.

The issues raised in this letter have resulted in some confusion on the part of public warehousemen and their customers. To avoid further confusion, I request an opinion on the following question:

If public warehousemen do not issue negotiable receipts and thereby do not meet the statutory definition of "public warehousemen" under Article 9103, sec. 1(2), V.T.C.S., do they fall under the regulatory authority of the Department of Licensing and Regulation?

Thank you in advance for your attention to this matter.

Sincerely,

David H. Cain
Chairman

cc: The Honorable David Swinford
Senator Dan Shelley

DHC/ir